

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 10**

**APAC GEORGIA, INC.,
MCDOUGALD-WARREN DIVISION**

EMPLOYER¹

and

CASE 10-RC-15163

**INTERNATIONAL UNION OF
OPERATING ENGINEERS, AFL-CIO,
LOCAL 926**

PETITIONER

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, a hearing was held before a hearing officer of the National Labor Relations Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to the undersigned.²

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is a Georgia corporation with an office located in Smyrna, Georgia, and places of business located in Athens, Gainesville, Candler and Auburn, Georgia, where it is engaged in the business of asphalt manufacturing, asphalt paving and heavy highway construction. During the past twelve months, a representative period, the

¹ The name of the Employer appears as amended at the hearing.

² The Employer and Petitioner filed briefs, which were duly considered.

Employer has purchased and received at its Georgia facilities, goods and materials valued in excess of \$50,000 directly from suppliers located outside the State of Georgia. The Employer is engaged in commerce with in the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The Petitioner is a labor organization within the meaning of Section 2(5) of the Act and claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. There is no history of collective bargaining at the facilities involved herein.

6. The Petitioner seeks a unit consisting of all full time and regular part time equipment operators, including distributor operators, asphalt plant operators, roller operators, paver operators, bulldozer operators, loaders, loader/grader operators, lowboy operators, backhoe operators, truckdrivers, welders, and mechanics employed by the Employer at its Gainesville, Candler, Athens and Auburn, Georgia facilities. The requested unit approximates 69 employees. The Employer is in general agreement with the scope and composition of the appropriate unit, but would, contrary to the Petitioner, also include 66 additional employees working at the aforementioned facilities, consisting of two shop clericals and 64 laborers.³

The Employer has asphalt manufacturing plants at Candler, Georgia; Athens, Georgia; and Auburn, Georgia, where it produces asphalt hot mix for its construction operations. At each of these three asphalt plants, there is a supervisor, loader operators

³ The Employer's job classification of laborer includes general laborers, raker/lutepersons, traffic control employees and screed personnel.

who are responsible for maintaining a sufficient quantity of material feeding into the asphalt plant, and asphalt plant operators who maintain the operations of the plant and oversee the discharge of the asphalt material into dump trucks for delivery to construction sites. There is also one laborer employed at the Candler, Georgia asphalt plant who assists that crew.

For its asphalt paving and road construction work, the Employer has asphalt plant crews, asphalt paving crews and stone base crews working out of its Gainesville facility. At Athens, in addition to asphalt plant crews, there are asphalt paving crews, stone base crews and dirt crews operating out of that facility. An asphalt paving crew is comprised of truckdrivers, equipment operators, who may be either paver operators or roller operators, and laborers such as screed personnel and rakers/lutepersons with the remaining crew being general laborers, all under the supervision of a crew supervisor.

Field operations begin when a dump truck carrying asphalt hot mix pulls up to a paver, a piece of equipment that takes the asphalt from the dump trucks and lays it to a smooth surface. A laborer known as a “dump man” stands at the back of the truck and in front of the paver. The “dump man” controls the truck in terms of carrying it back to a certain point, stopping it and directing it to raise the bed. The “dump man” also collects tickets from the dump truck driver coming from the asphalt plant. He signs the ticket that it was reserved at a certain time. The “dump man” accumulates the tickets and delivers them to the foreman at the end of the day so that foreman can account for the work accomplished on timesheets. The general laborers on the asphalt paving crew control traffic through the placement of cones, barrels, flaggers and sometimes, through the use of pilot cars.

Two laborers operate the screed controls, which are on either side of the paver, to ensure that asphalt is laid at the proper grade. The screed, like an iron, is a heated piece of metal under which the loose asphalt hot mix is forced. The screed, which is part of the paver, seals the asphalt and shapes the top of the asphalt so that it is smooth and level, once placed on the ground. The asphalt raker/luteperson is a laborer who follows behind the paver. After the hot mix is placed, loose and hot on the ground, but before it is rolled, the raker corrects any surface imperfections like high or low spots with an asphalt rake. The roller operators compress the hot mix with the roller into a smooth finished product to complete the asphalt paving process.

Finally, the asphalt plant crew makes asphalt at the jobsites. There are truck drivers on this crew who drive service trucks, the asphalt distributor and water trucks. The distributor operator handles a truck that holds 2,500 gallons of asphalt cement. The operator transports the asphalt cement to the jobsites. Prior to laying the asphalt, the operator sprays a thin layer of hot asphalt cement on the prepared grade so that the asphalt hot mix will bond. The distributor operator is required to have a commercial drivers license with a hazardous waste endorsement to legally transport that material. Laborers on the asphalt plant crew also shovel asphalt and assist in cleaning equipment and operating the equipment occasionally.

The stone base crews are comprised of a foreman, motor grader operator, roller operator, water truck driver and laborers. The Athens facility also has dirt crews. The dirt crews, like the stone base crews, are involved in light grading as well as stone base construction.

Additional construction equipment includes the bulldozers and “lowboys.”

Bulldozer operators work on the dirt crews, pushing dirt around with a large metal blade on the front of the machine. A “lowboy” is driven by a truck driver and is a tractor/trailer combination with a long trailer upon which pavers and rollers are placed. When the lowboy operator is not driving this vehicle, he may work around the Employer’s shop repairing or servicing equipment, driving a water truck on a stone base crew or helping on an asphalt paving crew in supporting jobsite operations.

The Employer’s equipment operators are not required to have any special training, certification or licensing. Laborers have been promoted to equipment operator positions and most equipment operators have followed that line of progression. The record evidence shows that the Employer is engaged in a process of cross-training, i.e., equipment operators may perform laborer’s functions and laborers may operate equipment. This occurs constantly. Laborers engage in on-the-job training on construction equipment on a daily basis. This is so that, when a vacancy arises, there will be a trained laborer available, as well as when there are daily absences and an equipment operator is needed. Both laborers and operators share the duties of cleaning and maintaining the equipment. “Lowboys”, asphalt distributors and water trucks are driven by truck drivers. However, laborers are also promoted into truck driver positions once they obtain the proper licensing. All employees have the same benefits.

Mechanics work at the Gainesville and Athens facilities. Their primary responsibility is to respond to equipment malfunctions and service the equipment as far as oil changes and lubrication. When they are not working to maintain equipment, they have driver’s licenses that enable them to drive certain vehicles and assist on an asphalt

paving or stone base crew or work at the asphalt plant. When a major piece of equipment breaks down, like a paver, the equipment operators and laborers assist the mechanics in trying to get that piece of machinery back into operation as soon as possible. Laborers have also been promoted to mechanic positions.

There are two shop clericals working at the Athens facility. They work in the shop, responding to the needs of the mechanics, laborers, equipment operators, superintendents and foremen as to any parts or components needed to perform the work. The shop clericals order filters, preventive maintenance components used in the shop, motors and transmissions and locate outside vendors to perform work that the Employer chooses not to perform. Thus, the shop clericals are in constant contact with mechanics, equipment operators and laborers. The shop is separated from the Athens office complex where the office manager, estimators and other office personnel are located. In addition, a welder works at the Athens facility. The welder cuts and welds metal necessary for a component or repairs. He moves around the Athens facility, assisting where he is needed.

The Petitioner proposes a unit that excludes all laborers and the two shop clericals. The evidence introduced by the Petitioner at the hearing provides inadequate support for these exclusions from the proposed unit. Petitioner relies upon the fact that its collective bargaining agreement with the Employer covering the Employer's Atlanta, Georgia facility covers only equipment operators and excludes laborers. The Laborers Union represents a separate unit of general laborers, raker/lutepersons, and screed persons and their trainees at the Atlanta facility. Petitioner's reliance upon a bargaining history at the Atlanta plant is not dispositive as there is no bargaining history at the

Gainesville or Athens facilities or their attendant asphalt plants. Indeed, the Petitioner's position and reliance upon bargaining history is somewhat compromised as it seeks to represent truckdrivers and welders in the petitioned-for-unit, contrary to its historical practice at the Atlanta facility. I further note that no union seeks to separately represent the laborers and shop clericals at the Gainesville, Auburn, Athens and Candler facilities.

The Petitioner also contends that a finding that the petitioned-for-unit is a craft unit is warranted. In the construction industry, the Board has found a separate unit of craft employees appropriate. Brown & Root, Inc., 258 NLRB 1002 (1981). The Board in Burns and Roe Services Corp., 313 NLRB 1307, 1308 (1994), defined a craft unit as:

[O]ne consisting of a distinct and homogenous group of skilled journeymen craftsmen who are primarily engaged in the performance of tasks which are not performed by other employees and which require the use of substantial craft skills and specialized tools and equipment. In determining whether a petitioned-for-group of employees constitutes a separate craft unit, the Board looks at whether the petitioned-for employees participate in a formal training or apprenticeship program; whether the work is functionally integrated with the work of the excluded employees; whether the duties of the petitioned-for employees overlap with the duties of the excluded employees; whether the employer assigns work according to need rather than on craft or jurisdictional lines; and whether the petitioned-for employees share common interest with other employees, including wages, benefits, and cross training.

In the instant case, however, the record indicates that no particular skills are required for the equipment operators. Rather, all employees engage in on-the-job training. There is interchange on a daily basis between the machine operators and the laborers and laborers have been promoted into equipment operator positions. On a day-to-day basis, an equipment operator may perform the work of a laborer, depending on necessity. Accordingly, the evidence reflects that asphalt plant crews, asphalt paving crews, stone base crews and dirt crews at all four facilities work in an integrated process

and that such crews work together and function as a team with respect to the job operations. See Brown & Root, supra. Thus, laborers routinely perform functions of equipment operators as a form of cross training. Moreover, the Employer assigns and utilizes its employees according to its needs rather than following strict craft lines. In addition, the laborers share common benefits with the machine operators and all the employees on a crew are under the same supervisory structure. Therefore, the record fails to show that the employees in the requested unit satisfy the requirement of either a craft unit or a functionally distinct group with common interests separate from the Employer's laborers.

The evidence also reveals that the two shop clericals should not be excluded from the unit. The shop clericals work in a support position to the machine operators and the laborers. Their work brings them in constant contact with the other employees employed by the Employer. Controlling inventory and having substantial contact with unit employees are factors requiring the inclusion of these shop clericals in the unit. Brown & Root, Inc., 314 NLRB 19 (1994); see Columbia Textile Services, 293 NLRB 1034 (1998); Regal Thread & Notion Co., 221 NLRB 610, 611 (1975).

Accordingly, I find that the following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

All full time and regular part time asphalt plant operators, paver operators, distributor operators, low boy operators, backhoe operators, loaders loader/grader operators, roller operators, motor graders operators, bulldozer operators, truckdrivers, laborers, including dump persons, asphalt rake/lutepersons, traffic control and screed personnel, shop clericals, welders and mechanics at the Employer's Gainesville, Candler, Athens and Auburn, Georgia facilities, excluding all other employees, office clerical employees, professional employees, guards and supervisors as defined in the Act.

The Petitioner expressed its desire to participate in an election even if I determine that a unit other than that petitioned for was appropriate. In accordance with usual practice, the Petitioner will be given 14 days from the date of this Decision and Direction of Election in which to demonstrate the requisite showing of interest among the above-described employees whom I find constitute a unit appropriate for the purpose of collective bargaining within the meaning of the Act. North Arundel Hospital Association, Inc., 279 NLRB 311, 312 fn. 10 (1986).

The parties stipulated and agreed that the below-listed individuals exercise one or more of the supervisory indicia enumerated in Section 2(11) of the Act and are excluded from the appropriate unit. There being nothing to the contrary in this record, I adopt the stipulation and find the following individuals are supervisors within the meaning of Act.

Fred V. Healan, Jr.	Leadperson
Edward S. Gaither	Leadperson
William A. Dowdle	Leadperson
Terry L. Tomblin	Leadperson
Eric C. Wright	Leadperson
Roger A. Loucks	Leadperson
Michael B. Burdette	Leadperson

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of

election to be issued subsequently, subject to the Board's Rules and Regulations.⁴

Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective-bargaining purposes by the International Union of Operating Engineers, AFL-CIO, Local 926.

LIST OF VOTERS

In order to assure that all eligible voters may have the opportunity to be informed of the issues in the exercise of the statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. Excelsior Underwear Inc., 156 NLRB 1236 (1966); N.L.R.B. v. Wyman-Gordon Company, 384 U.S. 759 (1969). Accordingly, it is hereby directed that within 7 days of

⁴ Your attention is directed to Section 103.20 of the Board's Rules and Regulations, a copy of which is enclosed. Section 102.30 provides that the Employer must post the Board's official Notice of Election at least three full working days before the election, excluding Saturdays and Sundays, and that its failure to do so shall be grounds for setting aside the election whenever proper objections are filed.

the date of this Decision, 2 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. North Macon Health Care Facility, 315 NLRB 359 (1994). In order to be timely filed, such list must be received in the Regional Office, 233 Peachtree Street, 1000 Harris Tower, Atlanta, Georgia 30303, on or before October 10, 2000. No extension of time to file this list may be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the filing of such list. Failure to comply with this requirement shall be grounds for setting aside the election whenever proper objections are filed. This list may be used initially to determine an adequate showing of interest. It shall be made available to all parties when the Regional Director shall have determined that an adequate showing of interest in the unit found appropriate has been established.

RIGHT TO REQUEST FOR REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this decision may be filed with the National Labor Relations Board,

addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. This request must be received by the Board in Washington by October 17, 2000.

Dated at Atlanta, Georgia, this 3rd day of October, 2000.

/s/ Martin M. Arlook
Martin M. Arlook, Regional Director
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